

Defendants' Horlocker and Moore's Motion for Summary Judgment

Ralph Eldridge v. City of Warren, P.O. Patrick Moore and P.O. Robert Horlocker
Case No.: 10-12893

EXHIBIT D

In The Matter Of:
RALPH ELDRIDGE vs
CITY OF WARREN, ET AL

ROBERT HORLOCKER
June 9, 2011

A & M COURT REPORTING
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June 9, 2011**

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RALPH ELDRIDGE,
Plaintiff,

Case No. 10-12893
Hon. Julian Abele Cook

v.
CITY OF WARREN, a municipal
corporation, OFFICER PATRICK
MOORE and OFFICER ROBERT
HORLOCKER, jointly and severally,
Defendants.

/

The Deposition of ROBERT
HORLOCKER, taken before Harvey A. Kahn, Certified Court
Reporter and Notary Public, in and for the County of
Oakland, acting in the County of Macomb, State of
Michigan, at 29900 Civic Center Boulevard, Warren,
Michigan on Thursday, June 9, 2011, at about 12:55 p.m.

APPEARANCES: ROBIN KYLE, ESQ.
615 Griswold
Suite 1120
Detroit, MI 48226
JOHN DOUGHERTY, ESQ.
2414 Dorchester North, #101
Troy, MI 48084-3760
Appearing on behalf of Plaintiff
JAMI E. LEACH, ESQ.
Garan, Lucow, Miller, P.C.
1000 Woodbridge Street
Detroit, MI 48207-3192
Appearing on behalf of Defendants

ALSO PRESENT: PATRICK MOORE

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1 Detroit, Michigan
2 Thursday, June 9, 2011
3 At About 12:55 P.M.
4 *
5 ROBERT HORLOCKER,
6 having first been duly sworn by the Notary
7 Public to tell the truth, the whole truth,
8 and nothing but the truth, testified as
9 follows:
10 MR. KYLE: Let the record
11 reflect that this is the deposition of
12 Officer Robert Horlocker, being taken
13 pursuant to Notice and agreement by counsel
14 as to time and place, and the transcript is
15 to be used for all purposes allowable under
16 The Federal Statutes and Federal Rules of
17 Civil Procedure.
18 Officer Horlocker, I'm Robin
19 Kyle, we met this morning.
20 THE WITNESS: Yes, sir
21 MR. KYLE: You sat through
22 your partner's deposition, and I think
23 you've been deposed before, is that right?
24 THE WITNESS: Yes, sir
25 MR. KYLE: So you know

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1 what the rules are?
2 THE WITNESS: Yes, sir
3 MR. KYLE: You know you
4 have to give a verbal answer --
5 THE WITNESS: Yes, sir
6 MR. KYLE: -- the court
7 reporter's not supposed to interpret a nod
8 of the head or communications of that sort.
9 THE WITNESS: Yes
10 MR. KYLE: If I ask a
11 question and it's not clear, just tell me
12 and if I can, I'll rephrase it.
13 THE WITNESS: Okay
14 MR. KYLE: So that you
15 understand what you're being asked, and you
16 give an accurate and truthful answer.
17 THE WITNESS: Okay.
18 DIRECT EXAMINATION BY MR. KYLE:
19 Q You are a currently a police -- is it a
20 police officer, is that your rank?
21 A Yes, sir.
22 Q You're with the Warren Police Department?
23 A Yes.
24 Q How long have you held that position?
25 A Thirteen-and-a-half years.

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<p>1 Q Prior to that, where were you employed?</p> <p>2 A The Wayne County Sheriff for a couple</p> <p>3 years, just short of two years, and before</p> <p>4 that, it was just restaurant work.</p> <p>5 Q You graduated from high school in what year?</p> <p>6 A 1985.</p> <p>7 Q When did you go to the police academy?</p> <p>8 A When I got hired here, January of '98.</p> <p>9 Q So between '85 and '98, did I get that</p> <p>10 right, you were doing restaurant work?</p> <p>11 A Yes, sir, and with the Wayne County</p> <p>12 Sheriff's Department starting in '96.</p> <p>13 Q What was your title or position with The</p> <p>14 Wayne County Sheriff's Department?</p> <p>15 A Detention officer.</p> <p>16 Q What is a detention officer?</p> <p>17 A I worked in the jail there.</p> <p>18 Q Now you know from your training as a police</p> <p>19 officer and your experience as a police</p> <p>20 officer, that use of excessive force in</p> <p>21 effectuating an arrest or an investigation</p> <p>22 is unconstitutional, is that a fair</p> <p>23 statement?</p> <p>24 A Yes, sir.</p> <p>25 Q How long have you known that?</p>	<p>1 the individual, as in this case, was</p> <p>2 apparently indicating I'm okay, I'm fine,</p> <p>3 and refused to get out of his truck or</p> <p>4 didn't get out of his truck, the fact that</p> <p>5 you don't know that the individual is sick</p> <p>6 and unable to comply does not enter into</p> <p>7 the equation, is that a fair statement?</p> <p>8 A Could you restate that?</p> <p>9 Q Yes. I mean, the fact that you don't know</p> <p>10 about the illness doesn't really affect your</p> <p>11 decision to use a taser, or does it?</p> <p>12 A Not knowing that he's ill and refused our</p> <p>13 verbal commands could lead to a taser</p> <p>14 situation, yes, sir.</p> <p>15 Q That's consistent with the Warren policy?</p> <p>16 A Yes.</p> <p>17 Q So under the Warren policy, it's okay to</p> <p>18 taser an individual who is sick and unable</p> <p>19 to comply simply because the officer hasn't</p> <p>20 determined or learned that the individual</p> <p>21 is sick?</p> <p>22 A In this situation, yes, I can't speak for</p> <p>23 all situations.</p> <p>24 Q In this situation, is it your recollection</p> <p>25 that Mr. Eldridge was sitting in the</p>
Page 6	Page 8
<p>1 A Since at least '98 officially, but . . .</p> <p>2 Q Very well. Now, you heard Officer Moore's</p> <p>3 testimony on the issue of policy with</p> <p>4 respect to use of tasers?</p> <p>5 A Yes, sir.</p> <p>6 Q I'm not trying to put words in your mouth</p> <p>7 or in Officer Moore's mouth, but this is</p> <p>8 the way I understand it, you can use a</p> <p>9 taser under The Warren Police Department</p> <p>10 policy where a suspect or individual does</p> <p>11 not follow an order given to him or her, is</p> <p>12 that a fair statement?</p> <p>13 A Yes, sir.</p> <p>14 Q It doesn't matter what the reason is for the</p> <p>15 individual's failure to follow the officer's</p> <p>16 command, is that a fair statement?</p> <p>17 A I guess it depends on the scope of the</p> <p>18 situation, but . . .</p> <p>19 Q Well, if an individual is sick, and</p> <p>20 therefore is unable to comply with the</p> <p>21 officer's command, is it appropriate under</p> <p>22 the Warren policy as you understand it to</p> <p>23 use a taser in that situation?</p> <p>24 A Depends if I know about the illness or not.</p> <p>25 Q So if you don't know about the illness, and</p>	<p>1 vehicle and the keys had been removed from</p> <p>2 the vehicle before he was tasered?</p> <p>3 A No, sir.</p> <p>4 Q You think the keys were still in the</p> <p>5 vehicle when he was tasered?</p> <p>6 A Yes, sir.</p> <p>7 Q Do you agree with Officer Moore that his</p> <p>8 foot was on the brake of the vehicle and</p> <p>9 the vehicle was running?</p> <p>10 A Yes, the vehicle was in gear, it was</p> <p>11 running, and his foot was on the brake.</p> <p>12 Q It's consistent with Warren policy to taser</p> <p>13 an individual who's sitting in a car with</p> <p>14 his foot on the brake, the car -- in this</p> <p>15 case, a truck in drive, and you taser the</p> <p>16 individual under those circumstances?</p> <p>17 A No, it's not.</p> <p>18 Q Oh, okay. Was the tasering in this</p> <p>19 instance, as far as your understanding,</p> <p>20 consistent with Warren policy?</p> <p>21 A Yes, sir.</p> <p>22 Q So he was tasered after his foot was -- or</p> <p>23 strike that -- after the vehicle was</p> <p>24 disabled, after the keys were removed?</p> <p>25 A After the vehicle was turned off, the</p>

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<p>1 engine was not running and the vehicle was</p> <p>2 in park.</p> <p>3 Q So the vehicle was not running when he was</p> <p>4 tasered?</p> <p>5 A Correct.</p> <p>6 Q The vehicle, what gear was it in, if you</p> <p>7 know?</p> <p>8 A I believe it was in park.</p> <p>9 Q The keys were out of the vehicle?</p> <p>10 A No, sir.</p> <p>11 Q So you tasered the individual -- or he was</p> <p>12 tasered by your partner, Officer Moore,</p> <p>13 before he removed the keys from the vehicle?</p> <p>14 A I removed the keys from the vehicle, but it</p> <p>15 was after the incident.</p> <p>16 Q That's consistent with policy?</p> <p>17 A Yes, sir.</p> <p>18 Q Because the vehicle was in park --</p> <p>19 A And not running.</p> <p>20 Q -- and not running, and you were not</p> <p>21 concerned about the vehicle, about him, his</p> <p>22 foot coming off the brake --</p> <p>23 A Correct.</p> <p>24 Q -- when he was tasered, and the vehicle</p> <p>25 just driving off?</p>	<p>1 Q Have you in the course of your, I think you</p> <p>2 said 13 years --</p> <p>3 A Yes.</p> <p>4 Q -- with the Warren Police Department,</p> <p>5 you've made numerous arrests, right?</p> <p>6 A Yes, sir.</p> <p>7 Q Hundreds?</p> <p>8 A Yes, sir.</p> <p>9 Q You've had numerous experiences with</p> <p>10 individuals who were intoxicated from</p> <p>11 alcohol consumption?</p> <p>12 A Yes, sir.</p> <p>13 Q You can recognize those individuals pretty</p> <p>14 quickly, is that a fair statement?</p> <p>15 A Some of their behaviors, yes.</p> <p>16 Q Did Mr. Eldridge, after you got there and</p> <p>17 talked to him, you've indicated he was kind</p> <p>18 of incoherent, but did he appear to be</p> <p>19 intoxicated to you?</p> <p>20 A He appeared to be not normal, under the</p> <p>21 influence of something.</p> <p>22 Q Have you had any training, in addition to</p> <p>23 the training that you heard Officer Moore</p> <p>24 testify about?</p> <p>25 A All my training has come through the</p>
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<p>1 A Right.</p> <p>2 Q Originally you were sent to this situation</p> <p>3 because you suspected a driver -- strike</p> <p>4 that.</p> <p>5 An individual was operating</p> <p>6 the vehicle under the influence perhaps?</p> <p>7 A Yes.</p> <p>8 Q That's the reason indicated in the radio</p> <p>9 run?</p> <p>10 A Yes, sir.</p> <p>11 Q It's also in the report that I think you</p> <p>12 filled out?</p> <p>13 A Yes, sir.</p> <p>14 Q Which is Exhibit 1?</p> <p>15 A Yes.</p> <p>16 Q How long did it take you to determine that</p> <p>17 the individual was not driving under the</p> <p>18 influence?</p> <p>19 A We never did determine that until we found</p> <p>20 the pump on him when he was on the ground.</p> <p>21 Q You didn't smell any alcohol?</p> <p>22 A No, just a strong odor of cologne.</p> <p>23 Q Was his speech slurred?</p> <p>24 A He was just incoherent, he just wasn't</p> <p>25 answering the questions.</p>	<p>1 department, interdepartmental.</p> <p>2 Q Is there any training that you've received</p> <p>3 on how to distinguish between when an</p> <p>4 individual is intoxicated from whatever</p> <p>5 source versus being ill?</p> <p>6 A They give you some signs, but some signs do</p> <p>7 overlap.</p> <p>8 Q So at the point in time when you were</p> <p>9 trying to pull Mr. Eldridge from the</p> <p>10 vehicle, and let me ask you this, did that</p> <p>11 occur before or after the first tasing?</p> <p>12 A He was, I believe his feet were on the</p> <p>13 ground, he was kind of -- I had a handcuff</p> <p>14 on his left wrist, had pulled his arm out</p> <p>15 of the door, his feet were on the ground,</p> <p>16 but I believe his arm -- his right hand was</p> <p>17 still holding the steering wheel, so you</p> <p>18 can construe that part of his body was</p> <p>19 still in the truck.</p> <p>20 Q When his feet got on the ground, that was</p> <p>21 the result of your pulling him or</p> <p>22 attempting to extract him from the vehicle</p> <p>23 physically?</p> <p>24 A I can only assume, I have no idea.</p> <p>25 Q The tasing occurs after that?</p>

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<p>1 A Yes, sir.</p> <p>2 Q At that point, you thought he still might be</p> <p>3 intoxicated?</p> <p>4 A At that point, I wasn't worried about it.</p> <p>5 I was just worried about gaining control of</p> <p>6 him.</p> <p>7 Q Did you have an opinion at that point as to</p> <p>8 whether or not the individual was</p> <p>9 intoxicated?</p> <p>10 A We felt he was under the influence of</p> <p>11 something, yes, whether it was alcohol or</p> <p>12 drugs.</p> <p>13 Q Do you have experience dealing with</p> <p>14 suspects who are under the influence of</p> <p>15 something other than alcohol?</p> <p>16 A Yes, sir.</p> <p>17 Q Do you have any experience dealing with</p> <p>18 individuals who are diabetic?</p> <p>19 A This was the first time.</p> <p>20 Q You've never received any training about</p> <p>21 recognizing the symptoms that go with</p> <p>22 hypoglycemia?</p> <p>23 A Not through the department, no.</p> <p>24 Q Do you have some personal knowledge about</p> <p>25 individuals going through hypoglycemia?</p>	<p>1 Q Which is a low blood sugar?</p> <p>2 A Low blood sugar.</p> <p>3 Q But you don't take any medication for that?</p> <p>4 A No, sir.</p> <p>5 Q You've never had a hypoglycemic episode</p> <p>6 where you weren't sure what was going on</p> <p>7 and you couldn't respond to questions and</p> <p>8 that sort of thing?</p> <p>9 A Never.</p> <p>10 Q Do you know anyone who has?</p> <p>11 A No, sir.</p> <p>12 Q Would the experience that you've just</p> <p>13 identified be the limit of your experience</p> <p>14 prior to June 18, 2009 of individuals</p> <p>15 suffering from some type of hypoglycemic</p> <p>16 episode?</p> <p>17 A Yes, sir.</p> <p>18 Q And again, there's been no training about</p> <p>19 how to recognize an individual who is</p> <p>20 suffering from a hypoglycemic episode?</p> <p>21 A No, not through the department.</p> <p>22 Q Is there any training on what to do once</p> <p>23 you've determined that you've encountered</p> <p>24 an individual who has hypoglycemia?</p> <p>25 A After this incident, they made some</p>
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<p>1 A Yes, sir.</p> <p>2 Q Give me your understanding of what</p> <p>3 hypoglycemia is?</p> <p>4 A Through my experience was personally, once</p> <p>5 my blood sugar gets low, I'm not to the</p> <p>6 point where I need insulin, but I do need</p> <p>7 to get food or some sort of sugar in my</p> <p>8 body. If I don't get -- I'm not to the</p> <p>9 point of diabetes, but when my hypoglycemia</p> <p>10 kicks in, if I don't get that type of food</p> <p>11 or something in my system, I suffer from</p> <p>12 headaches, speckles in my vision, stuff</p> <p>13 like that.</p> <p>14 Q Okay.</p> <p>15 A I've never been to the point of</p> <p>16 incoherency. I've always understood what's</p> <p>17 going on, and I'm able to take care of it.</p> <p>18 Q Are you -- since you brought it up, are you</p> <p>19 insulin dependent?</p> <p>20 A No, sir.</p> <p>21 Q Are you diabetic?</p> <p>22 A No, sir.</p> <p>23 Q What is the condition that you have?</p> <p>24 A It's just been diagnosed, way back in</p> <p>25 junior high, just hypoglycemia.</p>	<p>1 suggestions.</p> <p>2 Q There weren't any prior to this incident?</p> <p>3 A Nothing formal, no.</p> <p>4 MR. KYLE: Counsel, I'm</p> <p>5 anticipating a subsequent remedial measure</p> <p>6 objection.</p> <p>7 BY MR. KYLE:</p> <p>8 Q But I'm going to ask you, just for purposes</p> <p>9 of discovery, what did they tell you?</p> <p>10 MS. LEACH: Objection,</p> <p>11 subsequent remedial measure. You can</p> <p>12 answer the question.</p> <p>13 BY MR. KYLE:</p> <p>14 Q Go ahead, officer?</p> <p>15 A They just gave us some typical signs you may</p> <p>16 encounter with somebody who might be</p> <p>17 suffering a diabetic shock incident or a</p> <p>18 diabetic who might not be up to par, up to</p> <p>19 their proper blood sugar level.</p> <p>20 Q They used the video of this particular</p> <p>21 incident, that's the subject of this</p> <p>22 lawsuit as kind of, for lack of a better</p> <p>23 term, training video for that?</p> <p>24 A They actually used it to show that you're</p> <p>25 not always dealing with what you think.</p>

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<p>1 Q Was there any training with relation to</p> <p>2 that video with respect to how to respond</p> <p>3 to an individual who's in a vehicle or in</p> <p>4 another situation, where they're in a</p> <p>5 hypoglycemic episode?</p> <p>6 A I wouldn't say it that way.</p> <p>7 Q Well, how would you say it?</p> <p>8 A They just gave some signs of diabetes, what</p> <p>9 somebody might be going through, it doesn't</p> <p>10 matter if they're in their house or in a</p> <p>11 car, and every situation's different, I</p> <p>12 mean, it depends on their blood sugar level</p> <p>13 as to how they're going to respond.</p> <p>14 Q Was there any training in relation to this</p> <p>15 number or this millions of numbers of</p> <p>16 diabetics in this country?</p> <p>17 A They might have thrown statistics out</p> <p>18 there, they threw statistics out there</p> <p>19 about autism. They might have thrown</p> <p>20 numbers at us, I don't recall those numbers.</p> <p>21 Q Now, the policy as you understand it, just</p> <p>22 assume hypothetically that you've made a</p> <p>23 determination that the individual is</p> <p>24 possibly suffering from a hypoglycemic</p> <p>25 episode, let's say you see a necklace or a</p>	<p>1 taser, what's your recollection of what</p> <p>2 happened?</p> <p>3 A I had the handcuff on him and both my hands</p> <p>4 on his left wrist. I believe, I don't know</p> <p>5 if I told Officer Moore to taser him or if</p> <p>6 he just did. I know it was deployed</p> <p>7 because I could hear the darts -- the</p> <p>8 probes shoot out, they make an ejection</p> <p>9 sound, but you could hear, it was a, it's</p> <p>10 like a staggered crackling sound, you know</p> <p>11 it didn't take effect. And based on his</p> <p>12 struggling, the amount of struggling he's</p> <p>13 still showing us, it did not take effect.</p> <p>14 Q Backing up for a minute, do you recall</p> <p>15 anyone asking him for his driver's license?</p> <p>16 A I thought I heard it, but I don't recall</p> <p>17 now.</p> <p>18 Q Is that a department policy in this kind of</p> <p>19 situation, the first thing you would do is</p> <p>20 ask the individual for a driver's license</p> <p>21 and registration?</p> <p>22 A Most times we do, but like I said, it</p> <p>23 depends on the situation.</p> <p>24 Q What about this situation excepted it from</p> <p>25 the most of the times?</p>
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<p>1 bracelet or something that indicates that,</p> <p>2 and you tell the individual they have to</p> <p>3 get out of the car and they don't comply,</p> <p>4 is it the Warren policy the taser would</p> <p>5 still be an appropriate method to get the</p> <p>6 individual to comply with the police orders?</p> <p>7 A I believe it depends on how the situation</p> <p>8 goes, but at that point, we're still</p> <p>9 responsible for his health now, and fire</p> <p>10 can't necessarily treat him in that</p> <p>11 position, so I do believe we still have to</p> <p>12 gain control of him, and put him in a</p> <p>13 situation where he can be treated.</p> <p>14 Q So the training that you've received,</p> <p>15 either before or subsequent to this</p> <p>16 incident, indicates to you that a taser is</p> <p>17 still an appropriate method to get a</p> <p>18 diabetic in a hypoglycemic situation out of</p> <p>19 a vehicle, a taser would be an appropriate</p> <p>20 use of force?</p> <p>21 A Yes, because until our fire responds and</p> <p>22 tells us for sure, I don't know, without</p> <p>23 identifiers, I don't know what that person</p> <p>24 is suffering.</p> <p>25 Q Now, after the first deployment of the</p>	<p>1 A I'm sorry?</p> <p>2 Q What about this situation, assuming you</p> <p>3 didn't -- no one asked him for his driver's</p> <p>4 license when you first encountered him, why</p> <p>5 would that be, why would you not do what</p> <p>6 you usually do, which is to ask for a</p> <p>7 driver's license?</p> <p>8 A When we approach the vehicle, we can see,</p> <p>9 obviously, his foot is on the brake, we go</p> <p>10 up to the vehicle, we can see it's in gear,</p> <p>11 our main concern is to stop that vehicle,</p> <p>12 number one, from moving if something does</p> <p>13 occur, and sometimes it just doesn't come</p> <p>14 out, where's your license.</p> <p>15 Q So after -- we were talking about what</p> <p>16 happened after the first deployment of the</p> <p>17 taser, and I think you said you had a</p> <p>18 handcuff on Mr. Eldridge's left wrist?</p> <p>19 A Yes, sir.</p> <p>20 Q Then what happened after that?</p> <p>21 A I believe I heard the trigger being pulled</p> <p>22 again because there was a pause after the</p> <p>23 first five seconds. We know it didn't take</p> <p>24 effect because he was still standing and</p> <p>25 still pulling away from us and struggling,</p>

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1 and so I could hear the trigger being
2 pulled again because you could hear that
3 same crackling again.
4 Q Then what happened next?
5 A That still didn't take effect. At that
6 point, we were able to get him at least up
7 against his truck, and then we were able to
8 get him to the ground, we wrestled him to
9 the ground.
10 Q Do you recall what Mr. Eldridge was saying?
11 A I -- I don't recall for sure.
12 Q Okay.
13 A I don't recall exactly what he was saying.
14 Q You got him on the ground?
15 A Yes, sir.
16 Q Did you see, at any point while he was on
17 the -- while Mr. Eldridge was on the
18 ground, did you see Officer Moore place his
19 knee on the back of Mr. Eldridge's neck?
20 A No, sir.
21 Q Do you believe that did not happen?
22 A I believe it did not happen.
23 Q How sure are you that it did not happen?
24 A I'm pretty sure because I was looking down,
25 trying to gain control of his right arm,

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1 and I could see all the way up to his
2 shoulder, and I believe that's where the
3 knee was connected to, was at that shoulder
4 blade.
5 Q You would agree that placing the knee on
6 the back of Mr. Eldridge's neck while he
7 was on the ground like that, would have a
8 high probability of resulting in an injury?
9 A It may, I mean, everybody's different,
10 everybody reacts to different physical
11 force different ways. So I can't speak for
12 his body make-up.
13 Q How big is Officer Patrick Moore?
14 A About 5-11, 240 pounds maybe.
15 Q He is strong?
16 A I would imagine, I've never had to fight
17 him.
18 Q You ever hand wrestle him?
19 A No.
20 Q No, okay. Would that be excessive, in your
21 opinion, under these circumstances for
22 Officer Moore to place his knee on the back
23 of Mr. Eldridge's neck?
24 A I can't speak for him.
25 Q Well, let me ask you this, are you his

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1 superior officer?
2 A No, we're equal.
3 Q You're equal, okay.
4 A Yes, sir.
5 Q One of you is not in charge of the other?
6 A No.
7 Q One of you guys says let's turn right, the
8 other one says let's go left --
9 A I guess it just depends on who's driving.
10 Q Depends on who's driving, right?
11 A Yes.
12 Q But as you saw the situation unfold, and
13 we're at the point where Mr. Eldridge is on
14 the ground, and he's face down on the
15 pavement, is that right?
16 A I believe his head was turned to one side
17 or the other.
18 Q But his stomach is on the ground?
19 A Yes, sir.
20 Q You and Officer Moore are on his back?
21 A Yes, we're over him, yes.
22 Q How much do you weigh?
23 A About 240.
24 Q Under those circumstances, this is after he's
25 tasered, he's on the ground, there's a

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1 handcuff on the left arm -- or wrist, and
2 his wrist is behind his back at that point?
3 A Yes.
4 Q Assuming that -- or strike that.
5 Under those circumstances,
6 would it be an excessive use of force to --
7 for Officer Moore to place his knee on the
8 back of Mr. Eldridge's neck?
9 A I can't speculate what he's thinking. We
10 only have control of one arm. His other
11 arm is under his body. I don't anything
12 about Mr. Eldridge, I don't know what he's
13 doing with that other hand, so I have no
14 idea.
15 Q Well, you can see his other hand, couldn't
16 you?
17 A Not at first, it was tucked under the right
18 side of his chest. I was trying to gain
19 control of that hand.
20 Q But he was pulling that hand away from you,
21 is that what you're saying?
22 A He was holding it under his body and
23 refusing to bring it back.
24 Q You had seen it while he was in the
25 vehicle, his right hand?

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<p>1 A Yes, initially, yes.</p> <p>2 Q Let me ask you this, would it be excessive</p> <p>3 force for Officer Moore to, as was</p> <p>4 suggested during his deposition, to bounce</p> <p>5 his knee upon the back of Mr. Eldridge's</p> <p>6 neck under the circumstances that we're</p> <p>7 talking about, would that be an excessive</p> <p>8 use of force?</p> <p>9 A I suppose it might, depending, yes, in this</p> <p>10 situation, it might.</p> <p>11 Q Now, you understood from -- strike that.</p> <p>12 Did you review the video of</p> <p>13 this situation before your deposition today?</p> <p>14 A Yes, sir.</p> <p>15 Q When did you do that?</p> <p>16 A 9:30, quarter to ten.</p> <p>17 Q Had you seen it since it was recorded back</p> <p>18 in June, on June 18, 2009?</p> <p>19 A Just during the training course.</p> <p>20 Q How many times total have you seen the</p> <p>21 entire video?</p> <p>22 A Two.</p> <p>23 Q That was during the training?</p> <p>24 A Yes, sir.</p> <p>25 Q And today?</p>	<p>1 that basically what they do while they're</p> <p>2 on that detail or do they patrol?</p> <p>3 A That's what they do during the day, but a</p> <p>4 similar of them are PERT team, but that's</p> <p>5 their main duties here as a corporal.</p> <p>6 Q You said Perk team?</p> <p>7 A PERT, I think our SWAT team, they do other</p> <p>8 things besides that if they choose, but</p> <p>9 that's their main duty here, is the</p> <p>10 training department.</p> <p>11 Q Is that P-E-R-T?</p> <p>12 A Yes.</p> <p>13 Q What does that stand for?</p> <p>14 A I believe it's Police Emergency Response</p> <p>15 Team.</p> <p>16 Q Now, so we're at a point where Mr. Eldridge</p> <p>17 is on the ground, you've got a handcuff on</p> <p>18 one, the left wrist, and your testimony is</p> <p>19 the right wrist is kind of under his body,</p> <p>20 is that right?</p> <p>21 A Yes.</p> <p>22 Q At that point, Officer Moore is -- exactly</p> <p>23 where is Officer Moore?</p> <p>24 A Well, if Mr. Eldridge's head would be here,</p> <p>25 and his legs are going this way, Officer</p>
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<p>1 A Yes, sir.</p> <p>2 Q When did that training take place?</p> <p>3 A Well, this happened in June of '09, our</p> <p>4 training starts in January, so it's</p> <p>5 sometime between January and May of 2010, I</p> <p>6 would believe.</p> <p>7 Q This would be -- wait a minute, I'm sorry,</p> <p>8 I started talking before you finished.</p> <p>9 A It was sometime in our winter season of</p> <p>10 2010, I believe, I don't think it was this</p> <p>11 year, I don't recall. It was either early</p> <p>12 2010 or early this year.</p> <p>13 Q Was there an instructor, for lack of a</p> <p>14 better term, during that training session?</p> <p>15 A Somebody showed the video and spoke briefly</p> <p>16 about the diabetes situation, but I don't</p> <p>17 recall who it was.</p> <p>18 Q Was it an officer?</p> <p>19 A It was a corporal.</p> <p>20 Q Someone in the Warren Police Department?</p> <p>21 A Somebody in the training department --</p> <p>22 Q In the training department?</p> <p>23 A Yes.</p> <p>24 Q Now, the individuals in the training</p> <p>25 department, are they limited to that, is</p>	<p>1 Moore's left leg is kind out this way and</p> <p>2 his knee and right leg is across the</p> <p>3 shoulder blades and upper back here. I</p> <p>4 believe I might have been like over his</p> <p>5 buttocks area and over like his right leg,</p> <p>6 trying to get that right arm behind him</p> <p>7 while I'm holding his left arm.</p> <p>8 Q Are you, just so I understand you</p> <p>9 correctly, Officer Moore has his knee on</p> <p>10 around the shoulder blades of Mr. Eldridge?</p> <p>11 A From my angle, it appeared that Officer</p> <p>12 Moore's right kneecap was into the right</p> <p>13 shoulder blade of Mr. Eldridge, and going</p> <p>14 back across that way towards Officer</p> <p>15 Moore's body, which was to the left of</p> <p>16 Eldridge.</p> <p>17 Q You are near Mr. Eldridge's buttocks. Do</p> <p>18 you have a knee or foot on him at that</p> <p>19 point?</p> <p>20 A I've got one knee across like his upper</p> <p>21 buttocks or small of the back, and I'm</p> <p>22 trying to get that right arm back -- I'm</p> <p>23 holding his left arm still, and trying to</p> <p>24 wrestle his right arm behind him.</p> <p>25 Q Both of you were using your knees on Mr.</p>

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<p>1 Eldridge's back?</p> <p>2 A I believe we each had a knee on his back,</p> <p>3 yes.</p> <p>4 Q Is that a specific technique that's trained</p> <p>5 in the department, that is, the use of a</p> <p>6 knee on the back of an individual who's on</p> <p>7 the ground?</p> <p>8 A That's a method, I mean, he's on his</p> <p>9 stomach, we're trying to get control of his</p> <p>10 back, and to keep his body from moving, we</p> <p>11 place a knee over it.</p> <p>12 Q Do you recall Mr. Eldridge yelling while</p> <p>13 this was going on, that is, while he's on</p> <p>14 the ground and both of you are on his back?</p> <p>15 A I don't recall.</p> <p>16 Q How much do you weigh?</p> <p>17 A About 240.</p> <p>18 Q So what happens next?</p> <p>19 A Well, we're finally able to get his right</p> <p>20 hand back there, I believe because his</p> <p>21 shoulders and arms were so broad, in fact,</p> <p>22 that we used a second pair of handcuffs as</p> <p>23 to not bring his arms too far back.</p> <p>24 Q Okay.</p> <p>25 A We get the second pair of handcuffs on him,</p>	<p>1 Eldridge?</p> <p>2 A At that point, we stand him up. I can see</p> <p>3 the imprint of a wallet in his back pocket,</p> <p>4 so I pull that out looking for</p> <p>5 identification. At the same time I'm doing</p> <p>6 that, I believe this device fall out from</p> <p>7 under his shirt, where his shirt was tucked</p> <p>8 in. It was like a black leather pouch, and</p> <p>9 there was a wire connected to it and</p> <p>10 exposed a little blue device within that</p> <p>11 pouch at that point.</p> <p>12 Q Now when you saw that, what was your --</p> <p>13 what went through your head?</p> <p>14 A I just looked at the pump and right away I</p> <p>15 thought maybe diabetes or some type of</p> <p>16 illness.</p> <p>17 Q Did you recognize it as a pump?</p> <p>18 A Yes.</p> <p>19 Q You'd seen one of those before?</p> <p>20 A Not like that, no.</p> <p>21 Q Something similar to that?</p> <p>22 A I just know, I've heard of pumps being</p> <p>23 hooked up to people for diabetes to inject</p> <p>24 insulin when it's needed.</p> <p>25 Q You've heard of pumps being hooked up to</p>
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<p>1 and at that point, we stand him up.</p> <p>2 Q Now, did you put the cuffs on both wrists,</p> <p>3 or --</p> <p>4 A I believe I did.</p> <p>5 Q Then did you connect an extra pair of cuffs</p> <p>6 between those two cuffs, between the cuffs</p> <p>7 on the right and the cuffs on the left?</p> <p>8 A There was just two pair total. Instead of</p> <p>9 using one pair, we grabbed -- I grabbed --</p> <p>10 I had Officer Moore give me his pair --</p> <p>11 Q I got you.</p> <p>12 A -- we put it on his right wrist, connected</p> <p>13 the two sets of handcuffs together.</p> <p>14 Q Did Mr. Eldridge ever complain that the</p> <p>15 cuffs were on too tight?</p> <p>16 A I didn't hear him say anything about that.</p> <p>17 Q Did you ever loosen them up?</p> <p>18 A Eventually, before the fire department got</p> <p>19 there, we took them right off. I didn't do</p> <p>20 anything with them so I don't recall.</p> <p>21 Q We're coming to that.</p> <p>22 A Okay.</p> <p>23 Q So you've got the cuffs on him?</p> <p>24 A Yes.</p> <p>25 Q What happens after you get the cuffs on Mr.</p>	<p>1 people for other forms of treatment?</p> <p>2 A Yes.</p> <p>3 Q So when you saw it, correct me if I'm</p> <p>4 wrong, you knew that unless this guy was a</p> <p>5 faker, walking around with a pump for no</p> <p>6 reason, he had some type of medical</p> <p>7 condition?</p> <p>8 A At that point, yes.</p> <p>9 Q The first thought you had was he was</p> <p>10 probably diabetic?</p> <p>11 A That was our first thought, yes.</p> <p>12 Q That was your first thought?</p> <p>13 A Yes.</p> <p>14 Q Excuse me. So the device that you saw, you</p> <p>15 were holding this, is that correct?</p> <p>16 A Yeah, when it fell out from under his</p> <p>17 shirt, I was holding it in my hand, but I</p> <p>18 could see wires going to his shirt, so I</p> <p>19 didn't pull it, I was just holding it.</p> <p>20 Q So what did you do with the device after</p> <p>21 that?</p> <p>22 A I don't know if I tucked it in his pocket,</p> <p>23 or I don't know what I did with it at that</p> <p>24 point. I don't know if I tucked in his</p> <p>25 pocket or put like back in his belt, I</p>

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1 don't recall what I did with it at that
2 point.
3 Q He was still handcuffed at that point, that
4 is, Mr. Eldridge was --
5 A Yes, sir.
6 Q -- still handcuffed?
7 A Yes.
8 Q Did you say anything to anyone about the
9 device?
10 A I just looked at Officer Moore initially,
11 and said what is this, and then, you know.
12 Q Did Officer Moore respond, to the best of
13 your recollection?
14 A I believe he looked at it also. We might
15 have talked about what it could be, and we
16 came to the conclusion probably diabetes,
17 some type of medical pump.
18 Q Do you recall what he said?
19 A I just believe said should we call fire or
20 do we need fire or something about the fire
21 department.
22 Q Did he say anything else that recall him
23 saying about the pump?
24 A No, sir.
25 Q So what happened next?

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1 A I believe Officer Moore called for dispatch
2 to have the fire department and Universal
3 Ambulance respond to our location.
4 Q After he called EMS, what happened?
5 A They responded and checked his blood level.
6 Q What happened with respect to Mr. Eldridge
7 once you determined that it more likely
8 than not, he had a medical condition,
9 specifically diabetes, and Officer Moore
10 called EMS, was Mr. Eldridge still on the
11 ground, where was he?
12 A No, he was standing up when we located the
13 pump, and at that point, we escorted him
14 over to the front of our scout car, there's
15 a black push bumper there, we told him to
16 have a seat there.
17 Q Was he still handcuffed at that point?
18 A Yes.
19 Q So he was handcuffed after you determined
20 that he was sick?
21 A After we saw the pump, I can't determine if
22 he's sick or not.
23 Q You saw the pump, did you ask Mr. Eldridge
24 if he had a medical condition?
25 A At that point, yes, we did.

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1 Q Was that the first point at which you
2 considered that he might be sick, as
3 opposed to being drunk?
4 A Yes.
5 Q Do you recall what he said?
6 A Well, I think we might -- I might have
7 asked do you have a medical condition, I
8 didn't ask specifically what, and I think
9 he said yes or shook his head, but he did
10 respond in a positive way.
11 Q What happened after that?
12 A After that, like I said, he was escorted to
13 the front of the scout car.
14 Q Did you ask him about his medical condition
15 any further?
16 A I don't recall.
17 Q Did you, after that point, did you loosen
18 the cuffs at some point?
19 A I didn't touch the cuffs anymore. I don't
20 know when they were loosened or . . .
21 Q So he remained in cuffs until the ambulance
22 arrived?
23 A I believe they were removed before that,
24 but he was still in cuffs when he was
25 sitting on the front of our car.

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1 Q Were you -- once you called for EMS and you
2 talked to Mr. Eldridge, whatever you said
3 to him about his condition, were you fairly
4 convinced at that point that there was a
5 medical situation going on with Mr.
6 Eldridge that explained why he did not
7 comply when he was asked to get out of the
8 truck or ordered to get out of the truck?
9 A Well, at that point we felt it was
10 necessary to have medical come and
11 determine that for us.
12 Q Were you -- strike that.
13 What do you know about
14 treating in an emergency situation,
15 treating a hypoglycemic episode?
16 A We've always -- I've always heard the myth
17 orange juice or some type of glucose.
18 Q Individuals, to your experience and
19 knowledge, who are suffering from a
20 diabetic hypoglycemic episode are not
21 violent?
22 A I wouldn't say that. I have no idea.
23 Q You haven't had, as of June 18th, 2009, you
24 hadn't had adequate training or experience
25 to know?

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<p>1 A I've never dealt with one person going 2 through that episode, no. 3 Q So that covers your personal experience. 4 What about your training, would you have 5 had adequate training at that time to know 6 if an individual was suffering from a 7 hypoglycemic episode, really needs some 8 sugar or orange juice? 9 A No, nothing formal, like I said, we're 10 given first aid and CPR every year, and 11 that might have been, you know, mentioned, 12 but never covered. 13 Q So as far as your training goes, you 14 wouldn't know whether or not such an 15 individual would be prone to violence? 16 A I have no idea, correct. 17 Q Since this incident, have you received 18 training, one way or the other, indicating 19 how you would address an individual that 20 you come upon who's seated in a vehicle, as 21 you've described, and as I think your 22 partner described during his deposition, 23 how would you handle that situation 24 differently in light of the training you 25 have received subsequent to June 18th, 2009?</p>	<p>1 discovering the device, either you saying 2 or Officer Moore saying we're fucked? 3 A Nobody ever said that. 4 Q How was the audio when you reviewed the 5 tape? I heard Officer Moore say the audio 6 wasn't that good. Did you have an 7 opportunity to review the video with 8 adequate audio? 9 A On the computer we saw it on, the volume 10 only went so high, so it was almost 11 muffled, but . . . 12 Q So it's a fair statement that you don't 13 really know what was said independent of 14 your own memory? 15 A Of my own memory, nothing was said like 16 that. 17 Q But you're not going to argue with what the 18 audio actually is on the CD? 19 A I would not argue with the audio that's 20 present. 21 Q Okay, very good. Now, were you shown 22 what's called a duces tecum, I'm sure you 23 know what that is, a request that you bring 24 certain documents to this deposition, was 25 that shown to you? Don't feel bad if it</p>
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<p>1 A Seeing as how he had no indication to alert 2 us to his condition, I might not have done 3 anything different. 4 Q But once you realized that he had a 5 hypoglycemic episode, he was in the middle 6 of hypoglycemic episode at the point in 7 time when you discovered the pump when he 8 was on the ground, what would you have done 9 differently from that point, if anything? 10 A From that point, I don't know, 'cause 11 there's nothing saying a diabetic can't be 12 drunk or violent, so, I don't know anything 13 about this gentleman. 14 Q You didn't believe he was drunk though at 15 that point, right, after you found -- 16 A At that point, I didn't believe so. 17 Q Right, because, I mean, you were in very 18 close contact with him, correct? 19 A Correct, yes. 20 Q You had a chance to observe his demeanor, 21 his eyes, you couldn't detect any odor of 22 alcohol coming out of his pores or 23 otherwise, is that true? 24 A We just smelled cologne on him. 25 Q Excuse me. Do you recall, after</p>	<p>1 wasn't, lawyers never show the witness, I 2 don't know why, but they don't. 3 A I was not shown it either. 4 Q Do you have anything, any documents that you 5 generated as a result of this incident on 6 June 18, 2009 pertaining to Mr. Eldridge, 7 any document that you generated that we 8 haven't looked at today? 9 A I don't believe so. 10 Q The only thing you would have generated is 11 Exhibit 1, which is in front of you? 12 A Yes, sir. 13 Q Did you make any notes during your training 14 session? 15 A During my training session? 16 Q Yes. 17 A No, sir. 18 Q What about with respect to tasing, did 19 you make any notes about anything you were 20 trained respecting tasing? 21 A No, sir, it's all just hands on. 22 Q Going back to the training and using this 23 video, it wasn't, and correct me if I'm 24 wrong, I'm not trying to put words in your 25 mouth, it was really a video on, as I think</p>

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<p>1 you said, things may not always be as you</p> <p>2 think, and if an individual suffering from</p> <p>3 a diabetic situation, an ambulance needs to</p> <p>4 be called or sugar administered, I think</p> <p>5 you guys did in this case?</p> <p>6 A No, I think they pretty much left it as you</p> <p>7 don't always have what you think.</p> <p>8 Q There wasn't any real instruction on what</p> <p>9 to do in that situation?</p> <p>10 A No.</p> <p>11 Q Now one of the things we asked for and it's</p> <p>12 your lawyer's fault that we don't have it,</p> <p>13 that's just a joke I'm not being serious.</p> <p>14 We asked for copies of any and all</p> <p>15 statements taken by you in connection with</p> <p>16 the June 18th incident.</p> <p>17 Did you take any written</p> <p>18 statements from anyone at the scene?</p> <p>19 A I spoke to Mrs. Tramble, but I don't know</p> <p>20 if I handed her the statement or if I had</p> <p>21 Officer Kohlruss do it. I believe I had</p> <p>22 her fill it out, and it should be somewhere</p> <p>23 with the report, but I don't recall that.</p> <p>24 Q Did she actually fill out a statement?</p> <p>25 A I spoke to her verbally, but I don't know</p>	<p>1 after you had already encountered the pump,</p> <p>2 and this was after the ambulance had</p> <p>3 arrived and attended to Mr. Eldridge that</p> <p>4 this statement was taken?</p> <p>5 A Yes, after I spoke to her, yes, it was after</p> <p>6 everything.</p> <p>7 Q So, obviously, that wouldn't have affected</p> <p>8 anything that you or your partner did prior</p> <p>9 to when the statement was given?</p> <p>10 A No, sir.</p> <p>11 Q How do you spell which name?</p> <p>12 A Kohlruss?</p> <p>13 Q Yes.</p> <p>14 A I believe it was K-o-h-l-r-u-s-s, he came</p> <p>15 to the scene, I believe even after the fire</p> <p>16 department or right around the same time as</p> <p>17 them.</p> <p>18 MR. DOUGHERTY: K-o-h?</p> <p>19 THE WITNESS:</p> <p>20 K-o-h-l-r-u-s-s.</p> <p>21 BY MR. KYLE:</p> <p>22 Q Now, there's been some testimony that the</p> <p>23 Warren Police Department first issued</p> <p>24 tasers in about 2006?</p> <p>25 A Yes, sir.</p>
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<p>1 if I gave her something to fill out or if</p> <p>2 Officer Kohlruss or if we just wrote her</p> <p>3 information down here so somebody could</p> <p>4 speak with her, that's why we have a phone</p> <p>5 number.</p> <p>6 Q Did she sign the statement that --</p> <p>7 A I don't even know if she filled one out, so</p> <p>8 ...</p> <p>9 Q Okay, I see, because I didn't see one, but</p> <p>10 I'm looking through the --</p> <p>11 A If she filled one out, it would have been</p> <p>12 with the packet you got.</p> <p>13 MS. LEACH: Mr. Kyle, I'm</p> <p>14 looking too, just to make sure, but I don't</p> <p>15 recall there being a written statement.</p> <p>16 MR. KYLE: I don't either.</p> <p>17 MS. LEACH: If there was,</p> <p>18 I would have attached the initial</p> <p>19 disclosures.</p> <p>20 THE WITNESS: I might have</p> <p>21 just spoken to her and wrote down her</p> <p>22 formation to include with this as a witness.</p> <p>23 BY MR. KYLE:</p> <p>24 Q The information that you got from this</p> <p>25 individual, you first became aware of it</p>	<p>1 Q Is that consistent with what you recall?</p> <p>2 A Yes, sir.</p> <p>3 Q Did you get one right away?</p> <p>4 A Yeah, I mean, within the first few weeks,</p> <p>5 they pretty much had them distributed, you</p> <p>6 know, within a month, I believe.</p> <p>7 Q Do all officers carry them?</p> <p>8 A Everyone on the street carries one, yes.</p> <p>9 Q Are you aware of any use of a taser by any</p> <p>10 Warren police officer that was later</p> <p>11 determined to be inappropriate?</p> <p>12 A I have no knowledge, no.</p> <p>13 Q Do you know anything about there was a news</p> <p>14 report of a taser use by this department on</p> <p>15 a individual who was already in custody and</p> <p>16 the video depicts him being tasered and</p> <p>17 then officers laughing, do you know</p> <p>18 anything about that?</p> <p>19 A No, sir.</p> <p>20 Q Do you know of any review of that use of</p> <p>21 taser?</p> <p>22 A It doesn't involve me, I have no idea.</p> <p>23 Q You didn't see any memorandums or any</p> <p>24 directives from the department indicating</p> <p>25 that that use of a taser would be in</p>

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<p>1 appropriate?</p> <p>2 A No, I don't recall.</p> <p>3 Q When is it inappropriate for an officer to</p> <p>4 use a taser as defined by the policy as you</p> <p>5 understand it?</p> <p>6 A It's inappropriate as a punitive tool.</p> <p>7 Q That's basically the limit on taser use by</p> <p>8 officers, is you can't use it as a means of</p> <p>9 inflicting punishment?</p> <p>10 A Correct.</p> <p>11 Q Now there was, you would agree with me or</p> <p>12 maybe you wouldn't, maybe because of the</p> <p>13 audio you're unable to say one way or the</p> <p>14 other, but when I reviewed the video, there</p> <p>15 are times where the sound completely cut</p> <p>16 off. It appears as if someone threw a</p> <p>17 switch or something and muted the recording</p> <p>18 of the audio.</p> <p>19 A Okay.</p> <p>20 Q Do you know how that happened, or first of</p> <p>21 all, do you know that that did happen or do</p> <p>22 you know one way or the other?</p> <p>23 A Just watching the video, I don't know, I</p> <p>24 mean, that system was faulty, that's why</p> <p>25 they got rid of it. From personal</p>	<p>1 was a medical emergency, yeah, we just</p> <p>2 struggled with him. If it turns out it's</p> <p>3 not, why go through that again?</p> <p>4 Q Did you see what the emergency medical</p> <p>5 response team did to Mr. Eldridge to</p> <p>6 address -- or strike that.</p> <p>7 Just what they did to him,</p> <p>8 did you see that?</p> <p>9 A Just from the video, I believe they might</p> <p>10 have checked his blood through his hand or</p> <p>11 finger and checked that, and determined a</p> <p>12 level and gave him I believe it was just a</p> <p>13 tube of glucose gel.</p> <p>14 Q Where were his hands --strike that.</p> <p>15 Was he still in handcuffs</p> <p>16 when that happened?</p> <p>17 A I believe he was not.</p> <p>18 Q Did you receive any instruction from the</p> <p>19 medical response team?</p> <p>20 A I don't recall.</p> <p>21 Q Did you have any discussion with them about</p> <p>22 Mr. Eldridge that you can recall?</p> <p>23 A We might have just said we found a pump, he</p> <p>24 might be diabetic, but I don't recall any</p> <p>25 conversation with them.</p>
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<p>1 experiences, I know where the toggle is</p> <p>2 located, if you turn your body a certain</p> <p>3 way, your vest turns that switch off,</p> <p>4 that's why that system was ineffective.</p> <p>5 Q You didn't disable the audio at any point</p> <p>6 during --</p> <p>7 A I wasn't wearing a microphone at all that</p> <p>8 day.</p> <p>9 Q I see. So if someone turned it off, it was</p> <p>10 not you?</p> <p>11 A Correct, in a two-man, they only assign one</p> <p>12 remote microphone to any vehicle.</p> <p>13 Q Were you driving that day or was Officer</p> <p>14 Moore?</p> <p>15 A Officer Moore was driving.</p> <p>16 Q Once Mr. Eldridge was in cuffs and seated</p> <p>17 on the front of the scout car, would you</p> <p>18 agree that you guys had control of the</p> <p>19 situation?</p> <p>20 A Yes, sir.</p> <p>21 Q He wasn't a threat at that point?</p> <p>22 A I didn't feel so, no.</p> <p>23 Q Was there any reason to leave him in</p> <p>24 handcuffs at that point?</p> <p>25 A Until our fire department could verify it</p>	<p>1 Q Did someone on the emergency medical</p> <p>2 response team tell you to remove the</p> <p>3 handcuffs?</p> <p>4 A I don't recall who said.</p> <p>5 Q You don't know whose decision it was or</p> <p>6 idea it was to take the cuffs off?</p> <p>7 A No, 'cause I didn't take them off.</p> <p>8 Q Assuming someone else hadn't removed the</p> <p>9 cuffs, when would you have removed them?</p> <p>10 A I don't recall anything about removing the</p> <p>11 handcuffs. Maybe I did do it, I just don't</p> <p>12 recall that part of it.</p> <p>13 Q When, consistent with policy, would it have</p> <p>14 been appropriate to remove the handcuffs?</p> <p>15 A If the fire department requested it, or if</p> <p>16 it is determined it's just a medical</p> <p>17 problem, I mean . . .</p> <p>18 Q Are you trained to inquire of an individual</p> <p>19 under these circumstances as to whether or</p> <p>20 not they have a medical condition before</p> <p>21 force is used to remove the individual from</p> <p>22 the vehicle?</p> <p>23 A Could you rephrase that?</p> <p>24 Q Yes. Is it your training that you've</p> <p>25 received from the City of Warren, that</p>

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<p>1 under these circumstances, you would make</p> <p>2 an inquiry of the individual once you've</p> <p>3 taken the keys from them and, you know, the</p> <p>4 person can't drive off and hurt himself or</p> <p>5 somebody, are you trained to inquire as to</p> <p>6 whether or not there's a medical</p> <p>7 explanation for the individual's</p> <p>8 non-compliance?</p> <p>9 A Generally people offer that information or</p> <p>10 there's some type of sign. Once we get</p> <p>11 that sign, I mean, we go from there.</p> <p>12 Q What signs are you looking for?</p> <p>13 A Bracelet, necklace, a badge, the pump on</p> <p>14 the outside of the body, any type of</p> <p>15 medical. We've seen pouches with needles</p> <p>16 in them and people say they're diabetic,</p> <p>17 anything to indicate any medical necessity.</p> <p>18 Q Now were you interviewed about this</p> <p>19 incident by anyone in the Warren Police</p> <p>20 Department?</p> <p>21 A Not officially. My sergeant might have</p> <p>22 asked what happened, we told him what</p> <p>23 happened, that's it.</p> <p>24 Q Have you seen this document that is a inter-</p> <p>25 department communication, Warren Police,</p>	<p>1 have. Thank you.</p> <p>2 MS. LEACH: I'm going to</p> <p>3 have some questions.</p> <p>4 CROSS EXAMINATION BY MS. LEACH:</p> <p>5 Q Officer Horlocker, just a few questions for</p> <p>6 you. There were some questions regarding</p> <p>7 taser use and verbal non-compliance and</p> <p>8 your procedures, you remember all those</p> <p>9 questions?</p> <p>10 A Yes.</p> <p>11 Q In this particular situation, Mr. Eldridge</p> <p>12 wasn't tasered only for verbal</p> <p>13 non-compliance, was he?</p> <p>14 A No.</p> <p>15 Q You were physically trying to remove him</p> <p>16 from the vehicle?</p> <p>17 A Yes.</p> <p>18 Q He was resisting those attempts?</p> <p>19 A Yes, he was.</p> <p>20 Q For a period of time?</p> <p>21 A Yes.</p> <p>22 Q Do you recall how tall Mr. Eldridge was?</p> <p>23 A I believe he was at least my height, I</p> <p>24 believe he's probably at least six-two.</p> <p>25 Q Any idea about how much he weighed or</p>
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<p>1 6-18-09, to Commissioner William Dwyer, it</p> <p>2 says through chain, from Sergeant Mark</p> <p>3 Javery, Number 511, subject: taser</p> <p>4 deployment, 09-35770?</p> <p>5 A I have not seen that, no.</p> <p>6 Q You have not seen that. When you said your</p> <p>7 sergeant might have asked you what</p> <p>8 happened, is that Mark Javery?</p> <p>9 A I believe he was in the station just</p> <p>10 checking on the paperwork. I believe a</p> <p>11 different sergeant came to the scene.</p> <p>12 Anytime there's a taser deployment, we call</p> <p>13 for a supervisor.</p> <p>14 Q You're referring to whomever came to the</p> <p>15 scene on that date?</p> <p>16 A Yes, sir.</p> <p>17 Q You don't recall that individual's name?</p> <p>18 A I believe it was Sergeant Colegio, but . . .</p> <p>19 MR. DOUGHERTY: Ask him to</p> <p>20 spell that name again.</p> <p>21 BY MR. KYLE:</p> <p>22 Q Would you please spell that name again,</p> <p>23 please?</p> <p>24 A Yeah, C-o-l-e-g-i-o.</p> <p>25 MR. KYLE: That's all I</p>	<p>1 weighed at the time?</p> <p>2 A Over 200 pounds.</p> <p>3 Q Did he feel strong to you?</p> <p>4 A Yes, he did.</p> <p>5 Q You've struggled with people?</p> <p>6 A Yes.</p> <p>7 Q When you were trying to get him cuffed and</p> <p>8 you described how you had one knee on his</p> <p>9 lower back, buttocks area, did you have</p> <p>10 your full weight on him?</p> <p>11 A No, because I'd say some of my weight was</p> <p>12 probably on my other leg, I needed to</p> <p>13 balance myself.</p> <p>14 Q Where was your other leg or knee?</p> <p>15 A On the ground next to him.</p> <p>16 MS. LEACH: Let's go off the</p> <p>17 record for just a second.</p> <p>18 (Off the record)</p> <p>19 BY MS. LEACH:</p> <p>20 Q Officer Horlocker, we took a break and</p> <p>21 tried to listen to -- and did listen to the</p> <p>22 DVD from the patrol car that had some audio</p> <p>23 on it. At the point where you were</p> <p>24 questioned on direct examination about a</p> <p>25 comment, something about you were going to</p>

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<p>1 be fucked or something like that, and we 2 checked that time stamp that was provided 3 to us by plaintiff's counsel, is that 4 correct? 5 A Yes. 6 Q You are saying something on the video, is 7 that correct? 8 A I'm saying something, yes. 9 Q It directly follows Officer Moore asking if 10 he should call for fire, correct? 11 A Yes. 12 Q Were you able to make out what it was you 13 were saying? 14 A I cannot make it out. 15 Q Do you have any recollection of saying 16 anything along the lines of we're going to 17 be fucked or we're going to get fucked? 18 A No, not at all. 19 Q No question in your mind? 20 A No question in my mind in that situation. 21 Q Did you have any reason to say something 22 like that? 23 A No. 24 Q Just one final thing. I know that there 25 were some questions about the taser</p>	<p>1 Q Did you have any reason to think that 2 continuing to pull on his arm was going to 3 effective? 4 A No, not at that point. 5 MS. LEACH: I have no more 6 questions. 7 REDIRECT EXAMINATION BY MR. KYLE: 8 Q Officer Horlocker, as I understand your 9 testimony on direct from your attorney, 10 your recollection is that Mr. Eldridge was 11 not tasered until you guys, that is, you 12 and Officer Moore physically were 13 unsuccessful in pulling him out of the car, 14 is that right? 15 A Yes. 16 Q So he wasn't tasered until there was a 17 physical confrontation between Mr. Eldridge 18 and yourself and your partner? 19 A Yes. 20 Q Now, the second time the taser was 21 deployed, then according to your testimony, 22 would also have been after physical means 23 were unsuccessful in removing him from the 24 vehicle? 25 A The second time was during the same</p>
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<p>1 procedure and policies of the City of 2 Warren Police Department. Are you aware 3 that there's a written procedure regarding 4 taser use? 5 A Yes. 6 Q There was one in effect at the time of this 7 incident? 8 A Yes. 9 Q Did you memorize that word-for-word? 10 A No, I did not. 11 Q Let me just read to you from the second 12 page where it says, The taser may be 13 deployed in situations where the resistance 14 offered by the subject exposes the officer, 15 the subject, or public to unnecessary 16 danger, or when lesser means of control 17 have been ineffective, or are likely to be 18 ineffective. 19 Are you familiar with that 20 language? 21 A Yes, I am. 22 Q In this situation, did you believe that 23 lesser means if control had been 24 ineffective? 25 A Yes.</p>	<p>1 struggle, so I -- 2 Q Okay. 3 A Obviously, the first one lasted five 4 seconds, might be another four or five 5 seconds to realize nothing's happening, and 6 then . . . 7 Q Was that a discretionary decision on your 8 part or would the policy have allowed you 9 to taser before you attempted force as you 10 understand the policy? 11 A Discretionary at what point? 12 Q At the point in time where you -- where the 13 taser was -- I understand you didn't use 14 the taser, but you were there when it was 15 used, is that a discretionary call, in 16 other words, do you have to implement 17 physical methods to get Mr. Eldridge out of 18 the car before you can taser him or would 19 that violate the policy if you didn't? 20 A No, it would not, not in this situation. 21 Q So you could have, even though based on you 22 recollection, you didn't or Officer Moore 23 didn't. He could have deployed the taser 24 after the verbal commands were not complied 25 with?</p>

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1 A Yes.
2 MR. KYLE: That's all I
3 have.
4 MS. LEACH: No more
5 questions.
6 ---
7 (DEPOSITION CONCLUDED)
8 ---

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CERTIFICATE OF NOTARY PUBLIC
STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I, HARVEY A. KAHN, a Notary Public within and for the County of Oakland, State of Michigan, do hereby certify that the witness whose attached deposition was taken before me in the entitled cause, was sworn to testify the truth, the whole truth, and nothing but the truth; that the testimony contained in said deposition was taken by me by means of recording; that said testimony was thereafter reduced to written form and that the said deposition is a true and correct transcript of the testimony given by said witness.

I do further certify that I am not connected by blood or marriage to any of the parties, or their attorneys or agents; that I am not an employee of any of them; nor am I interested directly or indirectly in the matter in controversy either as counsel, agent, attorney or otherwise.

IN WITNESS WHEREOF, I have hereunto set my hand at Waterford, Michigan, County of Oakland, State of Michigan.

HARVEY A. KAHN
CER-5178
Notary Public, Oakland County, Michigan
My Commission Expires: 8/17/17

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